



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-806]

Silicon Metal from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). The period of review ("POR") is June 1, 2010, through May 31, 2011. The Department has preliminarily determined that the mandatory respondent, Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng"), made sales of subject merchandise to the United States at prices below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3627, and (202) 482-5193, respectively.

SUPPLEMENTARY INFORMATION

On June 10, 1991, the Department published the antidumping duty order on silicon metal from the PRC.¹ On June 1, 2011, the Department published a notice of opportunity to request an administrative review of the order for the June 1, 2010, through May 31, 2011 POR.² On June 30, 2011, the Department received a timely request from Globe Metallurgical Inc. (“Petitioner”) for an administrative review of the antidumping duty order on silicon metal from the PRC for Shanghai Jinneng.³ On July 28, 2011, the Department initiated the administrative review of the antidumping duty order on silicon metal from the PRC for the 2010-2011 POR.⁴

On August 2, 2011, the Department issued the antidumping questionnaire to Shanghai Jinneng. Between September 2011 and January 2012, Shanghai Jinneng responded to the Department’s questionnaire and supplemental questionnaires and Petitioner commented on Shanghai Jinneng’s responses.

In response to the Department’s September 15, 2011, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value selection,⁵ Shanghai Jinneng and Petitioner filed surrogate country and surrogate value comments on November 4, 2011 and rebuttal comments on November 14, 2011.

On November 7, 2011, the Department received a request from Petitioner to verify the information submitted by Shanghai Jinneng pursuant to 19 CFR 351.307(b)(1)(v) and for good

¹ See Antidumping Duty Order: Silicon Metal from the People’s Republic of China, 56 FR 26649 (June 10, 1991).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review, 76 FR 31586 (June 1, 2011).

³ See letter from Petitioner to the Secretary of Commerce, regarding “Silicon Metal From the People’s Republic of China; Request for 2010-11 Administrative Review,” dated June 30, 2011.

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews, 76 FR 45227 (July 28, 2011) (“Initiation Notice”).

⁵ See Letter from Howard Smith, Program Manager, Office 4, to All Interested Parties, “Antidumping Duty Administrative Review of Silicon Metal from the People’s Republic of China,” dated September 15, 2011 (“Surrogate Country and Values Letter”).

cause.⁶ On February 15, 2012, Petitioner submitted comments for the Department's consideration in the preliminary results and on February 21, 2012, Shanghai Jinneng submitted rebuttal comments.⁷

Scope of the Order

Imports covered by the order are shipments of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Also covered by the order is silicon metal from the PRC containing between 89.00 and 96.00 percent silicon by weight but which contain a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States ("HTSUS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the merchandise is dispositive.

⁶ See letter from Petitioner to the Honorable John Bryson, Secretary of Commerce, regarding, "Silicon Metal from the People's Republic of China; 2010-11 Administrative Review; Request for Verification," dated November 7, 2011. The Department responded to this request in a memorandum to the file from Rebecca Pandolph, International Trade Analyst, Office 4, AD/CVD Operations, regarding, "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China," dated concurrently with this notice.

⁷ See letter from Petitioner to the Honorable John Bryson, Secretary of Commerce, regarding, "Silicon Metal from the People's Republic of China; 2010-11 Administrative Review; Preliminary Results Comments," dated February 15, 2012 and letter from Shanghai Jinneng to the Honorable John Bryson, Secretary of Commerce, regarding, "Silicon Metal from the People's Republic of China: Shanghai Jinneng International Trade Co., Ltd.- Rebuttal to Petitioner's Comments on the Preliminary Results," dated February 21, 2012.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (“NME”) country.⁸ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.⁹

In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁰ It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test

⁸ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591, 9593 (March 5, 2009) (unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009)).

⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303 (May 22, 2006).

¹⁰ See Initiation Notice, 76 FR at 45228.

established in Sparklers,¹¹ as amplified by Silicon Carbide.¹² However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹³

Wholly Chinese-Owned

Shanghai Jinneng stated that it is a wholly Chinese-owned company.¹⁴ Therefore, the Department must analyze whether this respondent can demonstrate the absence of both de jure and de facto governmental control over its export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.¹⁵

The evidence provided by Shanghai Jinneng supports a preliminary finding of a de jure absence of governmental control based on the following: (1) there is an absence of restrictive stipulations associated with the company’s business and export licenses; (2) there are applicable legislative enactments decentralizing control of PRC companies; and (3) there are formal

¹¹ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (“Sparklers”).

¹² See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”).

¹³ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

¹⁴ See Letter from Shanghai Jinneng to Rebecca M. Blank, Acting Secretary of Commerce, regarding, “Silicon Metal from the People’s Republic of China: Shanghai Jinneng International Trade Co., Ltd.-Section A Questionnaire Response,” dated August 30, 2011 (“Section A Response”) at 2.

¹⁵ See Sparklers, 56 FR at 20589.

measures by the government decentralizing control of PRC companies.¹⁶

2. Absence of De Facto Control

The Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁷ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that the evidence on the record supports a preliminary finding of a de facto absence of governmental control with respect to Shanghai Jinneng based on record statements and supporting documentation showing that the company: 1) sets its own export prices independent of the government and without the approval of a government authority; 2) has the authority to negotiate and sign contracts and other agreements; 3) has autonomy from the government regarding the selection of management; and 4) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁸

The evidence placed on the record of this administrative review by Shanghai Jinneng demonstrates an absence of de jure and de facto government control with respect to the

¹⁶ See Section A Response at 5-10.

¹⁷ See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

¹⁸ See Section A Response at 5-10.

company's exports of the merchandise under review, in accordance with the criteria identified in Sparklers and Silicon Carbide. Therefore, we have preliminary granted Shanghai Jinneng separate rate status.

Selection of a Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP") valued in a surrogate ME country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using "to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are – (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country.

In the instant review, the Department identified Colombia, Indonesia, the Philippines, South Africa, Thailand and Ukraine as a non-exhaustive list of countries that are at a level of economic development comparable to the PRC and for which good quality data is most likely available.¹⁹ On January 13, 2010, Petitioner and Shanghai Jinneng proposed selecting Thailand as the surrogate country because it is at a level of economic development comparable to the PRC and is a significant producer of comparable merchandise.²⁰ Petitioner provided export data from Global Trade Atlas ("GTA") demonstrating that during the POR, Thailand exported 14,022 metric tons of silicon metal worldwide.²¹ With respect to data considerations, in selecting a

¹⁹ See Surrogate Country and Values Letter at Attachment 1.

²⁰ See letter from Shanghai Jinneng to Rebecca M. Blank, Acting Secretary of Commerce regarding, "Silicon Metal from the People's Republic of China," dated November 4, 2011 ("Shanghai Jinneng's SV Comments") at 1-2 and letter from Petitioner to John Bryson, Secretary of Commerce regarding, "Silicon Metal from the People's Republic of China; 2010-11 Administrative Review; Comments on Surrogate Country Selection and Submission of Surrogate Value Data" dated November 4, 2011 ("Petitioner's SV Comments").

²¹ See Petitioner's SV Comments at 4 and Exhibit 4.

surrogate country, it is the Department's practice that, "... if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country."²² Currently, the record contains surrogate value information, including a surrogate financial statement, only from Thailand. The Department is preliminarily selecting Thailand as the surrogate country on the basis that: (1) it is at a comparable level of economic development to the PRC, pursuant to section 773(c)(4)(A) of the Act; (2) it is a significant producer of comparable merchandise, pursuant to section 733(c)(4)(B) of the Act; and (3) we have reliable data from Thailand that we can use to value the FOP. Therefore, we have calculated NV using Thai prices, when available and appropriate, to value Shanghai Jinneng's FOP.²³ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.²⁴

Fair Value Comparisons

In accordance with section 777A(d)(2) of the Act, to determine whether Shanghai Jinneng sold silicon metal to the United States at less than fair value, we compared the export

²² See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004) available at <http://ia.ita.doc.gov>.

²³ See Memorandum to the File through Howard Smith, Program Manager, AD/CVD Operations, Office 4, from Rebecca Pandolph, International Trade Compliance Analyst, regarding "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Factor Valuation Memorandum," dated March 1, 2012 ("Surrogate Value Memorandum").

²⁴ Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum ("IDM") at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the Department is hereby requesting that the interested party provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

price (“EP”) of the silicon metal to the NV of the silicon metal, as described in the “Export Price,” and “Normal Value” sections of this notice.

Export Price

In accordance with section 772(a) of the Act, we used EP for all sales reported by Shanghai Jinneng. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate values.²⁵

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies.²⁶ Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3)

²⁵ See the “Factor Valuation Methodology” section for further discussion of surrogate values.

²⁶ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People’s Republic of China, 71 FR 19695, 19703 (April 17, 2006) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006)).

amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOP reported by Shanghai Jinneng for materials, energy, labor and packing.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV by adding together the values of the FOPs, general expenses, profit, and packing costs. We calculated FOP values by multiplying the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.²⁷ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Thai import surrogate values a Thai surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's ("CAFC") decision in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Shanghai Jinneng can be found in the Surrogate Value Memorandum.

In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, contemporaneous or closest in time with the POR, product-specific, and tax-exclusive.²⁸ The record shows that import data from Thailand's

²⁷ See, e.g., New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

²⁸ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004) (unchanged in

Customs Department, as published by the GTA, as well as data from other Thai sources used, are typically contemporaneous with the POR, product-specific or for similar products, and tax-exclusive.²⁹ Thus, for these preliminary results, in accordance with its practice, the Department used data from the Thailand Customs Department and other publicly available sources from Thailand in order to calculate surrogate values for Shanghai Jinneng's FOP (direct materials and packing materials) and certain movement expenses.³⁰ In those instances where we could not obtain publicly available surrogate values contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the International Monetary Fund's Consumer Price Index ("CPI") for Thailand.³¹

Furthermore, with regard to Thailand's import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.³²

Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004)).

²⁹ See Surrogate Value Memorandum at 3-6.

³⁰ See Surrogate Value Memorandum at 1- 2 and Attachment 1.

³¹ See Surrogate Value Memorandum at 2 and Attachment 3.

³² See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7; see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20.

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.³³ Rather, the Department bases its decision on information that is available to it at the time it makes its determination.³⁴ Therefore, we have not used prices from India, Indonesia, or South Korea in calculating Thailand's import-based surrogate values. Additionally, we disregarded prices from NME countries. Furthermore, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.³⁵ Lastly, the Department has also excluded imports from Thailand into Thailand because there is no evidence on the record regarding what these data represent (e.g., re-importations, another category of unspecified imports, or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.³⁶

Previously to value the respondent's cost of labor, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income ("GNI") and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). However, on May 14, 2010, the CAFC, in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("Dorbest"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in Dorbest, the Department no longer relies on the regression-based wage rate methodology

³³ See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100-576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24; see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007) (unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007)).

³⁴ See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008) (unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008)).

³⁵ Id.

³⁶ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

described in its regulations. On February 18, 2011, the Department published in the Federal Register a request for public comment on the interim methodology, and the data sources.³⁷

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.³⁸ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

In these preliminary results, the Department calculated the labor input using the data on industry specific labor cost from the primary surrogate country (i.e., Thailand), as described in Labor Methodologies. The Department relied on Chapter 6A labor cost data for Thailand from the ILO’s Yearbook. The Department used ILO Chapter 6A labor cost data for the year 2000 because this is the most recent Chapter 6A data available for Thailand. The Department further determined that the two-digit description under ISIC-Revision 3-D (“Manufacture of Basic Metals”) is the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by Thailand to the ILO under Sub-Classification 27 of the ISIC-Revision 3-D, in accordance with section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is 81.96 baht per hour. The Department inflated this value to the

³⁷ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment, 76 FR 9544 (February 18, 2011).

³⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

POR using Thai CPI data. For further information on the calculation of the wage rate, see Surrogate Value Memorandum at 5.

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, benefits, housing, training, etc. The financial statement used to calculate the surrogate financial ratios does not include itemized details regarding the indirect labor costs incurred. Therefore, the Department has not made adjustments to the surrogate financial ratios.

We valued all packing and direct materials, except quartz, using Thai import data from the GTA that are contemporaneous with the POR. We valued quartz using the price of unground quartz in 2010 from Mineral Statistics of Thailand 2006 -2010 report issued by the Thai Department of Primary Industries and Mines.³⁹

We valued electricity using data from the Thai Provincial Electricity Authority and Electricity Generating Authority of Thailand as reported by the Thailand Board of Investment in its 2011 publication Costs of Doing Business in Thailand for large general services at a voltage of 22-33 kilovolts. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates in Thailand. As the rates were in effect during the POR, we are not adjusting the average value for inflation.⁴⁰

We valued truck freight expenses using a per-unit average rate from the Express Transportation Organization of Thailand as reported in Thailand Board of Investment's 2011 publication, Costs of Doing Business in Thailand.⁴¹ Because the rate is from August 2005, we inflated this rate to a POR rate using Thai CPI data.

³⁹ See Surrogate Value Memorandum at 4.

⁴⁰ See Surrogate Value Memorandum at 6.

⁴¹ See Surrogate Value Memorandum at 7.

We valued railway freight using price data from State Railway of Thailand as reported in Thailand Board of Investment's 2011 publication, Costs of Doing Business in Thailand.⁴²

Because the rate is from August 2011, we deflated it to the POR using Thai CPI data.

We valued ocean freight using price data from Profreight International Co., Ltd., as reported in Thailand Board of Investment's 2011 publication, Costs of Doing Business in Thailand.⁴³

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand for a 20 foot container published in the World Bank publication, Doing Business 2012: Thailand.⁴⁴

Lastly, we valued selling, general and administrative expenses, factory overhead costs, and profit using the contemporaneous 2010 financial statement of GS Energy Co., Ltd., a Thai producer of silicon metal, which is identical to subject merchandise.⁴⁵

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.⁴⁶

⁴² See Surrogate Value Memorandum at 8.

⁴³ See Surrogate Value Memorandum at 8.

⁴⁴ See Surrogate Value Memorandum at 6.

⁴⁵ See Surrogate Value Memorandum at 10.

⁴⁶ See Surrogate Value Memorandum at 2.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists for the period June 1, 2010 through May 31, 2011.

Silicon Metal from the PRC	
Exporter	Margin (percentage)
Shanghai Jinneng International Trade Co., Ltd.	5.5

Disclosure

The Department intends to disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.⁴⁷ Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs.⁴⁸ Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.⁴⁹ Requests should contain the party's

⁴⁷ See 19 CFR 351.309(c)(1)(ii).

⁴⁸ See 19 CFR 351.309(d).

⁴⁹ See 19 CFR 351.310(c).

name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined.⁵⁰ Parties should confirm by telephone the date, time, and location of the hearing. The Department will issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating customer-specific assessment rates for the merchandise subject to this review. Because we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).⁵¹ To determine whether the duty assessment rates are de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific ad valorem ratios based on the estimated entered value. Where a customer-specific ad valorem rate is zero or de minimis, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁵²

⁵⁰ See 19 CFR 351.310.

⁵¹ See 19 CFR 351.212(b)(1).

⁵² See 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporter listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 139.49⁵³ percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

⁵³ See Final Determination of Sales at Less Than Fair Value: Silicon Metal from the People's Republic of China, 56 FR 18570, 18571-2 (April 23, 1991).

The Department is issuing and publishing these preliminary results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

____ March 1, 2012 ____
Date

[FR Doc. 2012-5582 Filed 03/06/2012 at 8:45 am; Publication Date: 03/07/2012]